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Archbishop of San Francisco

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re Case No. 23-30564

18 THE ROMAN CATHOLIC ARCHBISHOP Chapter 11

Page 1 of 1

## Debtor and Debtor in Possession.

**DEBTOR'S EMERGENCY MOTION FOR  
INTERIM AND FINAL ORDERS  
AUTHORIZING THE DEBTOR TO (1) PAY  
CERTAIN PREPETITION INVOICES FOR  
ABUSE SURVIVORS' ASSISTANCE AND  
SAFE ENVIRONMENT PROGRAMS, AND  
(2) CONTINUE ITS PREPETITION  
PRACTICE OF PAYING FOR ABUSE  
SURVIVORS' ASSISTANCE AND SAFE  
ENVIRONMENT PROGRAMS**

Date: August 24, 2023  
Time: 1:30 p.m.  
Via ZoomGov

Judge: Hon. Dennis Montali

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1 The Roman Catholic Archbishop of San Francisco (“RCASF” or “Debtor”), the debtor and  
2 debtor in possession in the above-captioned chapter 11 case (the “Bankruptcy Case”), hereby moves  
3 this Court (the “Motion”), pursuant to sections 105 and 363(b) of title 11 of the United States  
4 Code (the Bankruptcy Code)<sup>1</sup> and Rules 9013 and 9014 of the Federal Rules of Bankruptcy  
5 Procedure (the “Bankruptcy Rules”), for the entry of interim and final orders, authorizing the  
6 Debtor (i) to pay certain prepetition invoices for abuse survivors’ assistance and safe environment  
7 programs, and (ii) to continue to pay certain invoices for such programs in the ordinary course of  
8 its business.

9        This Motion is based on the within memorandum of points and authorities, the notice of  
10      hearing on first day motions filed by the Debtor, the *Declaration of Joseph J. Passarello in*  
11      *Support of Petition and First Day Motions* (“Passarello Background Decl.”), the *Declaration of*  
12      *Deacon Fuad “Fred” Totah* in support of this Motion (“Totah Decl.”), the *Declaration of Paul E.*  
13      *Gaspari in Support of Chapter 11 Petition and First Day Motions* (“Gaspari Decl.”) filed  
14      concurrently herewith and incorporated in this Motion by reference and upon such oral and  
15      documentary evidence as may be presented at the hearing on the Abuse Survivor Assistance  
16      Motion. The Debtor’s proposed form order granting the relief requested in this Motion on an  
17      interim basis (the “Interim Order”) is attached hereto as Exhibit 1.

I.

## INTRODUCTION

20       1.       The Debtor has an established process for survivors of clergy abuse to have access  
21 to trained professionals who can help them address their trauma. To support these survivors, among  
22 other things, the Debtor pays for the survivors' counseling with licensed therapists.

23       2. In addition, the Debtor has implemented safe environment programs to prevent the  
24 future occurrence of sexual abuse by clergy or others affiliated with the Debtor. These safe  
25 environment programs involve, among other things, strict education and training protocols for all

<sup>28</sup> <sup>1</sup> Unless otherwise indicated, all section references in this Motion shall be to the Bankruptcy Code.

1 who minister or volunteer within the Archdiocese and mandatory fingerprinting and background  
2 checks for employees, clergy, and volunteers who have direct contact with children.

3       3.       These programs are meant to serve those affected by historical clergy sexual abuse  
4 and to prevent future abuse. They must continue uninterrupted during this Bankruptcy Case. It is  
5 therefore necessary and appropriate to authorize the Debtor to pay any outstanding prepetition  
6 balances due and owing for these programs and to continue to fund these programs on a postpetition  
7 basis in the ordinary course of business.

II.

## **JURISDICTION**

10       4.     This is a core proceeding pursuant to 28 U.S.C. § 157(b), the *Order Referring*  
11 *Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order No. 24 (N.D. Cal.), and  
12 Local Rule of Bankruptcy Procedure for the Northern District of California 5011-1(a) (the  
13 “Bankruptcy Local Rules”).   Venue for this matter is proper in this district pursuant to 28 U.S.C.  
14 §§ 1408 and 1409.

15        5.        The legal bases for the relief requested in this Motion are sections 105(a) and 363(b)  
16 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

III.

## BACKGROUND

## 19 | A. General Background

20        6. On August 21, 2023 (the “Petition Date”), the RCASF commenced this Bankruptcy  
21 Case. The RCASF filed the Bankruptcy Case to reorganize its financial affairs pursuant to a plan  
22 of reorganization that will, among other things, fairly, justly, and equitably compensate survivors of  
23 sexual abuse by clergy or others associated with the RCASF and bring healing to survivors,  
24 parishioners and others affected by past acts of sexual abuse. The RCASF requires the bankruptcy  
25 court’s protection and the protection of the bankruptcy laws to make fair and equitable payment on  
26 all of the claims against it, including the claims by survivors of abuse, trade creditors, and others,  
27 while continuing its ministries and the support it offers to Catholic parishes and communities.  
28 Additional detailed background information on the RCASF can be found in the Passarello

1 Background Decl. and the Gaspari Decl.<sup>2</sup>

2       7.       In each diocesan bankruptcy where a plan of reorganization has been confirmed, the  
3 plan confirmed by the bankruptcy court was a pot plan negotiated through extensive mediation by  
4 and among the interested parties in the Bankruptcy Case, after exchanging information with  
5 statutory and/or other committees appointed by the Office of the United States Trustee (the “U.S.  
6 Trustee”) in those cases, which mediations settled disputes over what constituted property of the  
7 bankruptcy estate and provided for a settlement of the claims of abuse survivors. The RCASF  
8 intends to negotiate a pot plan of reorganization as early as possible which will: (a) allocate the  
9 RCASF’s remaining assets fairly among the legitimate competing interests for such property; (b)  
10 provide a process to fully, fairly and expeditiously liquidate claims of abuse survivors; and (c)  
11 permit the RCASF to carry on the RCASF’s essential ministries and services so the RCASF can  
12 continue to meet the needs of the Non-Debtor Catholic Entities, parishioners, and others who rely  
13 on the RCASF’s ministry, education, and charitable outreach.

14       8.       In the State of California, there have been two “open window” periods allowing  
15 individuals to bring claims under civil law for childhood sexual abuse which otherwise were barred  
16 because the statute of limitations (prescription) had expired. In 2002, the California Legislature  
17 enacted a new statute to permit certain expired civil claims of childhood sexual abuse against not  
18 only the perpetrators but also against third-party defendants (like the Debtor) for a one-year period  
19 starting January 1, 2003 (the “First Legislation”). While no amount of money can adequately  
20 compensate a survivor for the harms she or he has suffered, the RCASF and its insurers, collectively,  
21 have paid more than \$70 million over the past 20 years to survivors, either directly or by funding  
22 group settlement funds, to fulfill the RCASF’s responsibility for the abuse of minors by a diocesan  
23 clergy.<sup>3</sup>

24       9.       On October 13, 2019, Governor Gavin Newsom signed into law California Assembly  
25 Bill No. 218 (“AB 218”). AB 218 again expanded the statute of limitations for individuals to file  
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<sup>2</sup> Capitalized terms not otherwise defined in this Motion shall have the same meanings ascribed to  
28 them in the Passarello Background Decl., the Passarello Decl., and the Gaspari Decl.

1 civil lawsuits for childhood sexual abuse. This allowed certain individuals to bring what had been  
2 time-barred claims against individuals and entities for such claims through and including December  
3 31, 2022. As of the Petition Date, there were approximately 537 separate, active lawsuits or  
4 mediation demands pending against the Debtor filed by plaintiffs alleging sexual abuse by clergy or  
5 others associated with the Debtor.<sup>4</sup>

6       10. Addressing the needs of survivors of clergy sexual abuse, and the protection of  
7 children, have long been priorities of the Debtor. The RCASF maintains an Independent Review  
8 Board to assist the Archbishop in reviewing and handling allegations of sexual abuse by persons  
9 acting in the name of the Catholic Church. Its five lay members (including a survivor of clergy  
10 sexual abuse, two doctors, a psychologist, and a retired law enforcement officer), the Archbishop  
11 and three clergy members, and other RCASF representatives meet quarterly, or more frequently as  
12 needed, to assess allegations and make recommendations on the handling of those allegations of  
13 sexual abuse of children by clergy. This consultative body is critical to the Debtor's work to address  
14 crimes against children and minors. The Independent Review Board works with the Archbishop to  
15 analyze and properly respond to claims so credibility can be determined and acted upon in the best  
16 interest of the survivor. Totah Decl., at ¶ 4.

17       11. Since October 2017, the Debtor has required safe environment trainings using an  
18 online synchronous platform provided by The National Catholic Risk Retention Group known as  
19 Virtus, an international leader in abuse awareness training, for all adults – whether volunteer or  
20 employed – who serve in the Archdiocese. Prior to October 2017 the Debtor provided safe  
21 environment programs through a different third-party provider. Processes have been put in place to  
22 refer anyone with claims regarding clergy sexual abuse to law enforcement, Child Protective  
23 Services as appropriate, and the Survivor Assistance Coordinator for assistance. Totah Decl., at ¶ 5.

24       12. In addition, the Debtor has local administrators at every Parish and School who  
25 monitor safe environment compliance and conditions. Totah Decl., at ¶ 6.

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27       4 It is the Debtor's understanding that there is a backlog associated with the processing of these  
28 cases in the Clerk's Office for Alameda County, and it is possible that other timely filed claims  
will be processed after the filing of this Bankruptcy Case of which the Debtor is not currently  
aware.

1           **B. Diocesan Mission Programs**

2           13. Supporting the needs of survivors of sexual abuse and protecting children have long  
3 been priorities of the Debtor. In that spirit, the Debtor offers (i) counseling, treatment, and  
4 programming for those who both claim to have been and have been credibly found to be survivors  
5 of abuse by members of the clergy (collectively, the “Abuse Survivors’ Assistance”), and (ii) safe  
6 environment scanning, training and classes for prevention. These programs (collectively, the “Safe  
7 Environment Programs”) are important and necessary to the Debtor’s ongoing obligations, including  
8 its moral and ethical responsibility to support abuse survivors in the San Francisco Bay Area. Totah  
9 Decl., at ¶ 7.

10           1.       **Abuse Survivors’ Assistance**

11           14. Since at least 2002, the Debtor has provided care and compensation to survivors of  
12 abuse by clergy. Broadly, the Debtor pays for survivors to receive psychological counseling and  
13 related medical treatment, including medications where appropriate as part of the Abuse Survivors’  
14 Assistance. Totah Decl., at ¶ 8.

15           15. The Debtor also employs a representative (the “Survivor Assistance Coordinator”)  
16 to oversee the administration of the Abuse Survivors’ Assistance and to ensure that the aims of the  
17 Abuse Survivors’ Assistance programs are met and that the programs’ needs are satisfied.<sup>5</sup> Abuse  
18 Survivors’ Assistance is available for up to three months to any requesting individual who makes  
19 an allegation of abuse by clergy or non-clergy affiliated with the Debtor. In some cases, the Debtor  
20 makes these Abuse Survivors’ Assistance programs available to family members who have been  
21 affected by the abuse of a loved one. Individuals who make substantiated claims of abuse are  
22 eligible for up to one year of Abuse Survivors’ Assistance. After one year, such individuals in San  
23 Francisco, San Mateo, and Marin Counties may be eligible for continued wellness programs and  
24 Abuse Survivors’ Assistance. Totah Decl., at ¶ 9.

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<sup>5</sup> Any compensation that may be paid to the Survivor Assistance Coordinator is included in the  
28 relief set forth in the *Motion for Authority to Pay Prepetition Wages, Salaries and Employee  
Expenses, to Pay Accrued Employee Benefits and Taxes, and Directing Banks to Honor Payroll  
and Expense Checks* (the “Payroll Motion”), filed contemporaneously herewith.

1       16. Abuse Survivors' Assistance is administered by psychologists, psychiatrists,  
2 licensed clinical social workers, and licensed marriage and family therapists selected by the recipient  
3 (each a "Counselor"). Before engaging a Counselor, the Debtor requires the Counselor to provide  
4 evidence that he or she is a state-licensed mental health professional with at least a master's degree  
5 in a relevant field. The Debtor recommends Counselors who have a background in trauma therapy.  
6 The Counselors are not employed by, or otherwise affiliated with, the Debtor. Totah Decl., at ¶ 10.

7       17. Counselors generally invoice the Debtor on a monthly basis. The Debtor pays the  
8 Counselors directly and in arrears. Some Counselors do not invoice the Debtor until well after they  
9 have performed services. Depending on a Counselor's billing practices, there can be a delay of up  
10 to three months between the date of service and payment to the Counselor. Totah Decl., at ¶ 11.

11       18. The Debtor requests updates from the Counselors on the goals of the therapy and the  
12 progress toward those goals when survivors are comfortable with the Counselors providing such  
13 reporting. Totah Decl., at ¶ 12.

14       19. As part of Abuse Survivors' Assistance, the Debtor reimburses the cost of  
15 medications and medication management services for recipients of Abuse Survivors' Assistance  
16 who require medication as a result of abuse. Other costs of Abuse Survivors' Assistance include,  
17 for example, renting space at neutral locations for individual and group therapy sessions for  
18 survivors and their families, and advertising the existence and accessibility of Abuse Survivors'  
19 Assistance therapy opportunities. Totah Decl., at ¶ 13.

20       20. No written settlement agreement or court order legally obligates the Debtor to pay  
21 for any Abuse Survivors' Assistance. Totah Decl. at ¶ 14.

22       **2. Safe Environment Programs**

23       21. The Debtor also incurs expenses in the ordinary course of its business in connection  
24 with "safe environment" training and background check programs that provide a safe environment  
25 for parishioners and visitors to diocesan facilities as part of the Safe Environment Programs. *See,*  
26 *supra*, at ¶¶ 11-13. Totah Decl. at ¶ 15.

27       22. As part of the Safe Environment Program, the Debtor requires that all employees,  
28 clergy, and volunteers who have direct, ongoing and certain non-ongoing contact (e.g. field trip

1 chaperone) with children be “Live Scan” fingerprinted and cleared by law enforcement through the  
2 California Department of Justice and the Federal Bureau of Investigation before performing ministry  
3 in the Archdiocese. Totah Decl., at ¶ 16.

4       23. The Debtor continues to require training programs for all adult volunteers and  
5 employees whose ministry within the Archdiocese involves direct, ongoing and certain non-ongoing  
6 contact with children. The training focuses on, among other things, the nature of child sexual abuse,  
7 how it is perpetrated, how to report it, and strategies for prevention. As stated above, in October  
8 2017, the Debtor adopted the online synchronous platform called “Virtus,” which is sponsored by  
9 The National Catholic Risk Retention Group and is used nationwide by Catholic entities like the  
10 Debtor. Before adopting Virtus, the Debtor utilized a different third-party provider. Totah Decl.,  
11 at ¶ 17.

12       24. Training through Virtus and other platforms is mandatory, even for a parent  
13 volunteering in his or her child’s school. In addition to this initial training, the Debtor also requires  
14 its volunteers and employees to renew the training every three years thereafter. The Debtor also  
15 employs a representative to oversee the administration and compliance with the Safe Environment  
16 Program (the “Safe Environment Coordinator”) to ensure that the aims of the Safe Environment  
17 Programs are met and that the program’s needs are satisfied.<sup>6</sup> Totah Decl., at ¶ 18.

18       25. The Safe Environment Program costs include fees for Live Scan fingerprinting,  
19 background checks performed through the assistance of the U.S. Department of Justice, and the cost  
20 of the training programs such as licensing fees for the Virtus software and amounts paid to trainers.  
21 The Debtor also pays for annual audits with on-site audits every three years, which allow the Debtor  
22 to assess compliance with Safe Environment Program policies and address any shortcomings. The  
23 on-site audits include additional visit-related expenses such as lodging, meals and transportation.  
24 The Debtor pays approximately \$300,000 per year in costs for the Abuse Survivors’ Assistance and  
25 Safe Environment Programs. In addition, the Debtor estimates that approximately \$4,000 in  
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28       <sup>6</sup> Any compensation that may be paid to the Safe Environment Coordinator is included in the  
relief set forth in the Payroll Motion.

1 prepetition expenses due under these programs are accrued but unpaid as of the Petition Date. Total  
2 Decl., at ¶ 19.

3 **IV.**

4 **RELIEF REQUESTED**

5 26. Pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules  
6 9013 and 9014, the Debtor hereby seeks entry of interim and final orders, in substantially the form  
7 attached to this Motion as Exhibit 1, authorizing but not directing it to: (i) pay accrued but unpaid  
8 prepetition amounts owed to Counselors and other counter parties involved in the Abuse Survivors'  
9 Assistance and Safe Environment Programs on an interim basis in the amount of approximately  
10 \$4,000 and affirmed on a final basis and providing that applicable banks be directed to honor checks  
11 or fund transfer requests regardless of whether they were issued prior to, or after, the Petition Date;  
12 and (ii) continue to pay those parties on a postpetition basis in the ordinary course of the Debtor's  
13 business.

14 **V.**

15 **BASIS FOR RELIEF**

16 27. The Debtor performs the Abuse Survivors' Assistance and Safe Environment  
17 Programs in furtherance of the Debtor's principal mission of serving the San Francisco Bay Area,  
18 performing works of mercy, and fostering the Catholic faith and community. As described above,  
19 each of the Abuse Survivors' Assistance and Safe Environment Programs is essential to the Debtor's  
20 charitable and religious mission and to its eventual reorganization. They are also required by the  
21 United States Conference of Catholic Bishops ("USCCB") Charter "Promise to Protect, Pledge to  
22 Heal."

23 28. Relief similar to that requested in this Motion has been granted in other chapter 11  
24 cases. *See, e.g., In re The Roman Catholic Bishop of Oakland*, No. 23-40523 (Bankr. N.D. CA June  
25 22, 2023) [ECF 113]; *In re The Roman Catholic Diocese of Rockville Centre, New York*, No. 20-  
26 12345 (SCC) [ECF 96] (Bankr. S.D.N.Y. Oct. 16, 2020); *In re The Roman Catholic Church of the*  
27 *Archdiocese of New Orleans*, No. 20-10846 (MSG) [ECF 161] (Bankr. E.D. La. June 15, 2020); *In*  
28 *re Archdiocese of Milwaukee*, No. 11-20059 (SVK) [ECF 192] (Bankr. E.D. Wis. Apr. 18, 2011).

1        **A. Prepetition Abuse Survivors' Assistance and Safe Environment Programs**

2        29.      As of the Petition Date, some of the costs of providing the Abuse Survivors' Assistance and Safe Environment Programs incurred before the Petition Date (the "Prepetition Costs") remained unpaid. Paying the Prepetition Costs is critical to ensuring that the Archdiocese's parishioners continue to have access to the Abuse Survivors' Assistance and Safe Environment Programs. The Abuse Survivors' Assistance and Safe Environment Programs are provided in furtherance of the Archdiocese's charitable and religious mission and required by the USCCB Charter. Maintaining the uninterrupted continuity of these programs is in the best interests of the Debtor's estate.

10        30.      Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of bankruptcy courts, authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Pursuant to Bankruptcy Code section 105(a), courts have invoked the "necessity of payment" doctrine<sup>7</sup> to authorize the immediate payment of a debtor's pre-petition obligations to unsecured creditors before plan confirmation when such payment is essential to the continued operation of the debtor in a chapter 11 reorganization. *See In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 192 (Bankr. D. Del. 1994) (to justify payment of one class of pre-petition creditors in advance of a confirmed plan, the debtor must show that payment is essential to the continued operation of the business); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 and n.1 (3d Cir. 1972) (pre-Bankruptcy Code case recognizing "necessity of payment" cases permitting immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid).

23        31.      The Ninth Circuit has recognized the "necessity of payment" doctrine. In *Burchinol v. Cent. Wash. Bank (In re Adam's Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987), the Ninth Circuit discussed the existence of two competing "fundamental tenets" of bankruptcy: (1) equality in the treatment of all creditors; and (2) the rehabilitation of debtor. The court stated that the

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7      Alternatively called the "necessity of payment" rule.

1 rehabilitation of a debtor “may supersede the policy of equal treatment” of creditors, and went on  
2 to describe such situations, specifically mentioning the payment of pre-petition wages and benefits  
3 to employees. *Id.* (“Cases have permitted unequal treatment of pre-petition debts when necessary  
4 for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital  
5 malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable  
6 supplies; and (iv) peripheral benefits under labor contracts.”).<sup>8</sup> Furthermore, the court went on to  
7 state that section 364(d), for example, “illustrates a Congressional willingness to subordinate the  
8 interests of pre-petition creditors to the goal of rehabilitation.” *Id.*

9       32.     In its discussion, the *Adam’s Apple* court did not mention an earlier Ninth Circuit  
10 case, *In re B & W Enters., Inc.*, 713 F.2d 534 (9th Cir. 1983), which questioned whether the  
11 “necessity of payment” doctrine survived the 1978 changes to the Bankruptcy Code, and stated that,  
12 if it did, the court would apply the doctrine only to railroad cases “absent compelling reasons.” *Id.*  
13 at 537. Ultimately, the court in that case declined to apply the doctrine because the appellants had  
14 not presented “sufficient justification” for extending the doctrine to the (non-railroad) debtor. *Id.*  
15 Numerous courts throughout the country have held that the doctrine did survive the 1978  
16 Bankruptcy Code changes and can apply to non-railroad Debtor. *See In re Ionosphere Clubs, Inc.*,  
17 *supra*, at 175-176; *In re Just for Feet, Inc.*, 242 B.R. 821 (Bankr. D. Del. 1999); *In re Gulf Air*, 112  
18 B.R. 152, 153 (Bankr. W.D. La. 1989) (finding that payment of pre-petition wage and benefit  
19 obligations was in the best interests of creditors and necessary for the successful reorganization of  
20 the debtor, the court granted the debtor’s motion to pay pre-petition employee related expenses).  
21 Moreover, the *Adam’s Apple* court in its discussion did not limit the doctrine to railroad cases only.

22       33.     The Debtor estimates that the aggregate amount of the unpaid invoices for the  
23 Prepetition Costs is approximately \$4,000.

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27       8     See also *In re Ionosphere Clubs, Inc.*, *supra*, at 176 (“The policy of equality among creditors...  
28 may be of significance in liquidation cases under Chapter 7, however, the paramount policy and  
goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of  
the debtor.”).

1       34. By this Motion, the Debtor seeks authorization to pay all invoices for Prepetition  
2 Costs in accordance with its prepetition practices, with approximately \$4,000 to be paid on an  
3 interim basis and affirmed on a final basis.

4 **B. The Postpetition Abuse Survivors' Assistance and Safe Environment Programs**

5       34. The Debtor believes that continuing to pay the costs of maintaining the Abuse  
6 Survivors' Assistance and Safe Environment Programs after the Petition Date ("Postpetition Costs")  
7 is consistent with prepetition practice and in furtherance of the Debtor's charitable and religious  
8 mission, and is therefore in the ordinary course of its operations. The Debtor should therefore be  
9 authorized to pay the Postpetition Costs as they come due in accordance with the Debtor's  
10 prepetition practice pursuant to section 363(c) of the Bankruptcy Code, which provides that "the  
11 trustee . . . may use property of the estate in the ordinary course of business without notice or a  
12 hearing." 11 U.S.C. § 363(c)(1).

13       35. However, in an abundance of caution, the Debtor seeks authorization to pay all  
14 Postpetition Costs as they come due in accordance with its prepetition practices. Section 363(b) of  
15 the Bankruptcy Code provides that "[t]he [debtor], after notice and a hearing, may use, sell, or lease,  
16 other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In  
17 order to use property of the estate under this provision, "there must be some articulated business  
18 justification, other than appeasement of major creditors." *In re Lionel Corp.*, 722 F. 2d 1063, 1070  
19 (2d Cir. 1983).

20       36. The Abuse Survivors' Assistance and Safe Environment Programs are crucial to the  
21 Debtor's ability to continue its mission to support its community and to maintain the trust of the  
22 communities it serves. Accordingly, the Debtor submits that sound reasons exist to continue to  
23 provide and pay for Ministerial and Mission Programs on a postpetition basis.

24       37. The Debtor estimates that Postpetition Costs will total approximately \$25,000 per  
25 month. By this Motion, the Debtor seeks authorization to pay all Postpetition Costs in the ordinary  
26 course of business and in accordance with its prepetition practices.

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**C. Basis for Relief Under Bankruptcy Rule 6003(b)**

2       38. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid  
3 immediate and irreparable harm, the Court may issue an order within the first 21 days of a chapter  
4 11 case granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of  
5 the estate, including a motion to pay all or part of a claim that arose before the filing of the petition.”  
6 Fed. R. Bankr. P. 6003(b). As described above and in the Passarello Decl., the relief requested is  
7 necessary for the Debtor to continue the Abuse Survivors’ Assistance and Safe Environment  
8 Programs without interruption. Accordingly, the Debtor respectfully submits that the interim relief  
9 requested in this Motion is necessary to avoid immediate and irreparable harm, and, therefore,  
10 Bankruptcy Rule 6003 is satisfied as to entry of an interim order.

**D. Basis for Waiver of Bankruptcy Rule 6004(h)**

12       39. For all the reasons set forth above and in the Passarello Decl., immediate interim  
13 relief is necessary to avoid immediate and irreparable harm that would result from interruption in  
14 the Abuse Survivors' Assistance and Safe Environment Programs. Accordingly, ample cause exists  
15 to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), and enter interim and  
16 final orders that are immediately effective.

VI.

## **RESERVATION OF RIGHTS**

19       40. Nothing contained in this Motion is intended to be or shall be construed as (i) an  
20 admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any  
21 appropriate party in interest's rights to dispute any claim, or (iii) an approval or assumption of any  
22 agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise,  
23 if the Court grants the relief sought in this Motion, any payment made pursuant to the Court's order  
24 is not intended to be, and should not be construed as, an admission to the validity of any claim or a  
25 waiver of the Debtor's rights to dispute such claim subsequently.

26       41. Nothing contained in this Motion is intended to be or shall be construed as a waiver  
27 of any of the Debtor's rights under any applicable law, including, without limitation, the Code of  
28 Canon Law, the First Amendment of the United States Constitution, the Constitution of the State of

1 California, California Corporations Code §§ 10000-10015, the Religious Freedom Restoration Act  
2 of 1993 (42 U.S.C. §§ 2000bb-2000bb-4), the church autonomy doctrine, charitable trust law,  
3 California trust law, and the Debtor's rights under any insurance policies and to proceeds thereof,  
4 and to object to disclosure of information and contend that certain assets discussed in this Motion  
5 are not property of the estate.

6 **VII.**

7 **NOTICE**

8 42. Notice of this Motion will be provided to (i) the Office of the U.S. Trustee for Region  
9 17; (ii) the Debtor's 20 largest unsecured creditors; (iii) the Office of the California Attorney  
10 General; (iv) special litigation and ordinary course counsel for the RCASF; and (v) those persons  
11 who have formally appeared in this Bankruptcy Case and requested service pursuant to Bankruptcy  
12 Rule 2002. Based on the urgency of the circumstances surrounding this Motion and the nature of  
13 the relief requested in this Motion, the Debtor respectfully submits that no further notice is required.

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VIII.

## **CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders, in the substantially the forms appended to this Motion as Exhibit 1, as requested in this Motion and grant such other and further relief as may be appropriate.

Dated: August 21, 2023

FELDERSTEIN FITZGERALD  
WILLOUGHBY PASCUZZI & RIOS LLP

By /s/ Paul J. Pascuzzi  
PAUL J. PASCUZZI  
JASON E. RIOS  
THOMAS R. PHINNEY  
Proposed Attorneys for The Roman Catholic  
Archbishop of San Francisco

Dated: August 21, 2023

## SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

## EXHIBIT 1

**[Proposed Interim Order]**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re Case No. 23-30564

## THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, Chapter 11

## Debtor and Debtor in Possession.

**[PROPOSED] INTERIM ORDER  
GRANTING DEBTOR'S EMERGENCY  
MOTION FOR INTERIM AND FINAL  
ORDERS AUTHORIZING THE DEBTOR  
TO (1) PAY CERTAIN PREPETITION  
INVOICES FOR ABUSE SURVIVORS'  
ASSISTANCE AND SAFE  
ENVIRONMENT PROGRAMS, AND (2)  
CONTINUE ITS PREPETITION  
PRACTICE OF PAYING FOR ABUSE  
SURVIVORS' ASSISTANCE AND SAFE  
ENVIRONMENT PROGRAMS**

Date: August 24, 2023  
Time: 1:30 p.m.  
Place: Via ZoomGov

Judge: Hon. Dennis Montali

### *Hearing Requested on Shortened Time*

The Roman Catholic Archbishop of San Francisco's ("RCASF" or the "Debtor")<sup>1</sup> motion, filed on August [•], 2023, as ECF No. [•] (the "Motion"), for an order authorizing the Debtor (i) to pay certain prepetition invoices for abuse survivors' assistance and safe environment programs, and (ii) to continue to pay certain invoices for such programs in the ordinary course of its business came on for hearing before this Court, on August \_\_, 2023, at \_\_:0 \_\_.m., on shortened time. Paul J. Pascuzz, Esq., of Felderstein, Fitzgerald, Willoughby, Pascuzzi & Rios LLP, appeared on behalf of the Debtor. All other appearances were as noted on the record.

<sup>1</sup> All capitalized terms used but not defined in this Order shall have the same meanings given to them in the Motion.

1        The Court having considered the Motion, the Passarello Background Decl., the Gaspari  
2 Decl., and the Passarello Declaration filed in support of the Motion, and the matters reflected in the  
3 record of the hearing, and the Court having found that it has jurisdiction over this proceeding; that  
4 this is a core proceeding; that notice given of the Motion is appropriate under the circumstances of  
5 this Bankruptcy Case and that no further notice is necessary; that the relief sought by the Motion is  
6 in the best interests of the Debtor, its estate, and its creditors; and that good and sufficient cause  
7 exists for such relief,

8        IT IS HEREBY ORDERED that:

- 9            1.        The Motion is GRANTED, on an interim basis, as set forth herein.
- 10            2.        The Debtor is authorized, but not directed, to pay accrued but unpaid prepetition  
11 amounts due and owing to Counselors and other counter parties involved in the Abuse Survivors'  
12 Assistance and Safe Environment Programs as of the Petition Date, on an interim basis, *provided,*  
13 *however,* that such interim payment shall not exceed approximately \$4,000, in the aggregate.
- 14            3.        The Debtor and its employees and agents are authorized to take such acts as are  
15 necessary and appropriate to implement and effectuate the relief granted herein.
- 16            4.        The Debtor's banks are authorized and directed to honor and pay all pre-petition and  
17 post-petition checks issued or to be issued and fund transfers requested or to be requested, by the  
18 Debtor in respect of the Abuse Survivors' Assistance and Safe Environment Programs.
- 19            5.        Notwithstanding the relief granted by this Order and any actions taken in accordance  
20 with this Order, nothing in the Motion or this Order shall be deemed: (a) an admission as to the  
21 validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on  
22 any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that  
23 any particular claim is of a type specified or defined hereunder; (e) a request or authorization to  
24 assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; or (f) a  
25 waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.
- 26            6.        A final hearing on the Motion shall be held on [MONTH] [DATE], 2023, at [TIME].

27            \* \* \* **END OF [PROPOSED] ORDER** \* \* \*